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C O N T E N T S.

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Office of the R.L.A.

In connection with the first elections recently held to the Faculty of Indian Systems of Medicine, Bombay, to be constituted under section 3A of the Bombay Medical Practitioners Act, 1938, the President of the Board, who is also the ex-officio Chairman of the Faculty, has raised certain issues. The Faculty is to consist of 14 members among whom are included, under clause (3) of section 3A, two members elected from amongst themselves by the Principals of Heads of recognized Institutions. It appears that there were only two nominations and the names of these two Principals were already forwarded to Government and declared as elected under sub-rule (6) of rule 7 of the Bombay Faculty of Indian Systems of Medicine Rules, 1949. The Chairman requests that their names should be published in the Bombay Government Gazette. The election of the recognized teachers held under clause (4) of section 3A is sought to be declared as void, and another date namely 15th November 1949 is to be fixed and notified for holding that election afresh. The Health and Local government Department has referred the following questions to the R.L.A. for advise:-

1) Whether the whole election of the Faculty should be held again or only that of the Teachers' Constituency under clause (4) of section 3A of the Act, as the election under clause 3 was already declared as 'uncontested'?

2) Whether the President of the Board, who is also ex-officio Chairman of the Faculty, can declare the election of the Teachers' Constituency void?

3) Whether the Chairman can function for the purposes of holding the election afresh? and

4) Whether the Chairman can perform incidental and

minor functions of the Faculty even though the Faculty has not been contituted?

Question No.1 — It is presumed that there was no irregularity in the election from the Principals' Contituency under clause (3) of section 3A. As that election was uncontested and as the two candidates have already been declared as elected, no question of declaring that election void can arise. The election for each constituency must be treated separately, unless there was some common defect or illegality affecting the elections of all the constituencies, which does not seem to be the case.

Question No.2 — Under rule 80 of the Bombay Faculty of Indian Systems of Medicine Rules, 1949, it for the purposes of the first election of the Faculty the procedure prescribed under rules 6,7 and 8 as far as may be, shall be followed. The power and the procedure applicable to the question of declaring an election void is contained in sub-rule (15) of rule 7 which reads as follows:-

> " The Faculty may of its own motion, or on an objection made before it, declare any election that has been held to be void on the ground of corrupt practice or any other sufficient cause and may call on the electorate to make a fresh election. The decision of the Faculty under this rule shall be final."

The difficulty in applying this sub-rule to the first election is that there can be no Faculty in existance for exercising the powers specified therein. Rules 6,7 and 8 which are to be applied to the first election, as far as maybe, themselves contrast the functions of the Chairman and the Faculty in several places. A very strict interpretation would, therefore, lead to the result that

Faculty as distinguished from the Chairman, in connection with an election can never be exercised in connection with the first election for the simple reason that there could be no Faculty in existence. That would not, however, carry out the obvious intention of rule 80, the object of which is to apply to the first election mutatis mutandis the procedure which is specified for elections in general. A case may arise, as in this instance, where it may become necessary to declare the election void. Sub-rule (16) of rule 7 provides that if any question arises as to the intention, construction or application of this rule, which in the opinion of the Faculty should be referred to Government, the Faculty shall refer such question to Government, whose decision shall be final. Although the Chairman may not exercise the powers under sub-rule (15) there is no reason why the Chairman should not exercise the powers of the Faculty under sub-rule (16) for the purpose merely of making a reference to Government, as otherwise the smooth conduct of first elections would become impossible and the faculty would never come into existence. The only available course in this case, therefore, is for the Chairman to make a reference under sub-rule (16) of rule 7 to Government read with rule 80. If Government is satisfied that it is necessary to declare the elections void, government may give a direction to the Chairman to make the declaration accordingly. It must however be observed that the reason given by the Chairman in his letter does not seem to be quite sufficient. The mere non-availability of the ballot boxes would not be a sufficient cause; for it would always be open to secure the boxes from the custody of the Police. If there be any other reason which affects the regularity

of the elections or which shows that a proper election was not held, that would, undoubtedly, furnish a sufficient cause within the meaning of sub-rule (15).

Question 3. There is no distinction in principle between the Chairman making arrangements for the very first election under rules 6,7 and 8 and the Chairman making similar arrangements and exercising similar functions for holding the same election afresh after it is declared void. The election would still be the first elecion and the entire procedure of rules 6,7 and 8 read with rule 80 would apply

Question 4. The Chairman cannot exercise the powers of the Faculty as such; and in any case, unless and until the Faculty in constituted it would not be feasible for the Chairman to act in the name of the Faculty.

In conclusion it is necessary to point out that sub-rule (15) does not seem to be intra-vires. It is apparently made in pursuance of the power given under section 29 of the Bombay Medical Practitioners Act, 1938. Clause (a) of sub-section (2) speaks in terms of rules to be made for the time at which and the place and manner in which elections shall be held under section 5. This clause certainly does not authorises the making of a rule for avoiding or setting aside an election. Sub-section (1) no doubt authorise the making of rules for carrying out all or any of the purposes of that power, but that power cannot be so extended as to embrace within its scope the power of making a rule for setting aside an election, which matter is as a rule specially provided for in the Statute itself. On general principles also it is advisable that a body to which elections are to be made- whether it be the retiring body or the newly constituted one-

should itself decide the question of the validity of any election. That would lead to an inevitable conflict between interest and duty and may, in some cases of acute party rivalries result in making interested persons judges in their own cause. It would, therefore, be desirable to amend the Act for prescribing a procedure for setting aside elections on certain well recognized grounds and appointing an independent authority for that purpose.

Id/- P.M.LAD.

Remembrancer of Legal Affairs.

U.O.to H.& L.G.D. No.193-L, dated the 8th October 1949.

RHB.
9.7.

Office of the R.L.A.

Whether electric treatment is "medicine"----

Bombay Medical Practitioners Act, 1938.

It appears that the Registrar of the Board of Indian System of Medicines wanted to file a complaint against one Mr.H.S.Gambers for the alleged infringement of the provisions of the Bombay Medical Practitioners Act, 1938. The Public Prosecutor who was consulted in the matter, however, advised that as Mr. Gambers only gives electric treatment and does not give medicine of any sort, he cannot be said to be contravening any provisions of the Act. The Registrar differs from the Public Prosecutor and holds the opinion that the word "practice" in section 32 of the Act should include all sorts of treatment. As the point is doubtful the matter is referred to the R.L.A. for advice.

2. Section 32 of the Bombay Medical Practitioners Act, 1938, prohibits a person, other than those specified therein, from practising or holding himself out, whether directly or by implication, as practising for midwifery. The expression "System of medicine" or personal gain any system of medicine, surgery or the term "medicine" has not been defined in the Act. It is obvious that giving electric treatment would not be included in the term "surgery" or "midwifery". No doubt the term "medicine" as used in the expression "system of medicine" would ordinarily include that department of knowledge and practice which is concerned with the cure, alleviation and prevention of diseases in human beings and with the restoration and preservation of health; and if the expression were to stand by itself, it may be capable of including curative treatment of any sort even by way of electrical appliances. But as is pointed out in Murray's New English Dictionary Vol.6 p.295, the word "medicine is in a more restricted sense applied to that branch of the above department of knowledge which is the province

of the physician in the modern application of the term; the art of restoring and preserving the health of human beings by the administration of remedial substances and the regulation of diet habits and conditions of life; distinguished from surgery and ~~[illegible]~~ obstetrics. The context of section 32 similarly distinguishes medicine from surgery and midwifery i.e. obstetrics, and, therefore, it is the restricted sense which would be more ~~/~~ acceptable to Courts, which, as is well-known, construe penal statutes strictly. "Medicine" as usually understood and as defined in the same dictionary means any substance or preparation used in the treatment of diseases, a medicament. The administration of some remedial substance, whether for internal or external use, is thus absolutely necessary and the mere application of electrical heat or the use of electrical appliances would not be a system of medicine in that sense. The view taken by the Public Prosecutor is correct.

Sd/- P.L.LAD.

Remembrancer of Legal Affairs.

U.R.to H.A L.G.D.No.9479, dated the 23rd August 1949.

RHB.
9.7.

Office of the R.L.A.

In his opinion No.9179 dated 23rd August 1949 the R.L.A. advised that the mere application of electrical heat or the use of electrical appliances would not be a system of medicine in the sense in which that expression is used in section 32 of the Bombay Medical Practitioners Act, 1938. The Health & Local Government Department invites attention to the amendment made in clause (e, of section 36 by Bombay Act No.XXXIII of 1949 and expresses the view that giving treatment by electricity can be considered to be a therapeutical system, and as such a person who practices this system contravenes the provisions of the Act unless he has undergone a course of training approved by Government and has passed an examination prescribed by Government. The R.L.A. is requested to advise.

2. Section 36 of the Bombay Medical Practitioners Act, 1938, provides that nothing in sections 32 and 34 shall apply to any person who practices homeopathy or any other therapeutical system (other than the system of Western Medical Science or the Indian System of Medicine) provided such person has undergone a course of training in such other therapeutical system for such period and in such institutions as may be prescribed by the Provincial Government and has passed an examination as may be prescribed by the Provincial Government. This is a saving provision intended to take certain practitioner out of the scope of section 32. It is not a provision which imposes any new liability. The intention of the section is to exempt certain categories who would otherwise have been covered by section 32, and it

doesnot propose to expand the scope of section 32. The contravention cannot be of section 30 but must be of section 32 itself. The K.L.A. has already held that a person who gives the treatment of mere application of electrical heat or of using electrical appliances could not be covered by section 32. The question of exempting him from the scope of section 32 in pursuance of section 30 does not, therefore, arise; and such person could not be committing a contravention of any provisions of the Act.

Id/- P.M.LAD.

Remembrancer of Legal Affairs.

J.R.to H.E.L.G.D.No.12000, dated the xxth November 19[illegible]

HHB.
9.7.